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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,460	04/19/2005	Karl Tiefenbacher	WEB-42803	8262

24131 7590 02/12/2009
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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
02/12/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/529,460	TIEFENBACHER, KARL	
	Examiner	Art Unit	
	Lien T. Tran	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *46-72* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *46-64 and 66-72* is/are rejected.

7)☒ Claim(s) *65* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

The previous 112 second paragraph rejection is hereby withdrawn due to the amendment and applicant's argument filed on 11/10/08.

Claim 52 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 52 is vague and indefinite in the recitation of " a pre-product" on line 4. Claim 52 depends from claim 46 which also recites a pre-product. It is not clear what the difference is between this pre-product and the one recited in claim 46 or is there a difference?

The rejection of claim 52 is necessitated by amendment.

Claims 46, 56-58,61,64, 70-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Schiffmann et al (GB 2228856) with evidence from Shoop et al (5756140) and Houraney et al (6063413).

Schiffmann et al disclose a brown and serve product and a process of making it. The process comprises the steps of baking yeast-raised products to a point of rigidity without any degree of browning, cooling the baked products, treating the baked product on at least one surface with an aqueous solution of sodium or potassium hydroxide in amount sufficient to provide browning of the treated surface and packaging the treated product in a container. The products are made from dough and include rolls, breadsticks, pretzels, breads or pastries or other such products that are fully formed and prebaked to the exact and size. (see pages 4, 5, 6 ,7 and the examples)

Schiffmann et al disclose the steps and product as claimed. Heating in a microwave will give hot air; thus, it is heating with hot air. The amendment changing " heat-treating" to " baking" does not define over Schiffmann et al. The term " baking " without denoting the apparatus to carry out the baking does not define over heating in a microwave taught in Schiffmann et al because baking is known in the art as baking in an oven or in a microwave oven. This is evident by the disclosure of Shoop et al on column 3 lines 15-16 where they state " baking of the coated foodstuff in a regular convection or microwave oven'. Houraney et al also disclose on column 3 lines 59-61, " baking in any type of conventional commercial or residential oven, including a mcirowave oven". Thus, the term baking does not exclude baking in a microwave oven.

Claims 47-55, 59-60,62-63,66-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiffmann et al.

Schiffmann et al do not disclose baking to the moisture content and the shaping formation cited in claims 48-55, chilling or freezing the baked pieces cited in claims 59-60, multiple steps of heating as in claims 62-63, mixing the lye with modified starch or modified cereal flour as in claim 66 and chilling or freezing the product before treating with lye as in claims 67-68, the production line of claim 69 and applying a sprinkled material as in claim 47.

It would have been obvious to one skilled in the art to bake the product to any varying moisture content depending on the type of product and the degree of doneness desired. It would also have been obvious to one skilled in the art to vary the shaping processing of the dough depending on the type of product

made. For example, if a molded shape is wanted, it would have been obvious to shape the dough in a mold. The shaping and moisture content are result-effective variables which can readily be determined by one skilled in the art. It would have been obvious to freeze or chill the baked product prior to treating when long term storage is desired before treating the surface of the product for browning. It would have been obvious to subject the product to multiple steps of heating depending on the degree of browning and the moisture content wanted in the final product. Schiffmann et al disclose additives can be added to the alkaline solution. It would have been obvious to one skilled in the art to add modified starch or flour to the solution when desiring to thicken the solution. Starch and flour are well known thickening agent. It would have been obvious to apply sprinkled material such as salt, spice, sugar etc.. when desiring to enhance the flavor and taste of the products. Schiffmann et al disclose products such as breadstick, pretzel etc..; there products are notoriously well known in the art to have granular seasoning material on the surface. As to the production line recited in claim 69, Schiffman et al desire for the product to be heated by consumer to have a hot product that is ready for consumption. However, ready to consumed product without any further processing is notoriously well known in the art. It would have been obvious to one skilled in the art to carry out the final heating step that gives the product a brown color in the production line if one wants to make a convenient ready to eat product. Such modification depends on the type of product one wants to market and would have readily apparent to one skilled in the art.

In the response filed 11/10/08, applicant argues claim 46 as amended is not anticipated by Schiffmann because it recites baking and Schiffmann discloses heating in a microwave oven. This argument is not persuasive because heating in the microwave oven is baking in the microwave oven. Baking is known in the art as heating the food using heating; this heat can be provided by a regular oven or a microwave oven as shown by Shoop et al and Houraney et in the 102 rejection above. Thus, the term " baking" without denoting the type of apparatus to carry out the baking does not differentiate from the heating in the microwave oven disclosed in Schiffmann. Schiffmann discloses baked product treated with lye and then heated in a microwave oven; thus, Schiffmann discloses further baking a pre-baked, lye treated intermediate product. Claim 46 is anticipated by Schiffman and Schiffman does not teach away from the claimed method because baking in the microwave oven is baking.

Applicant further argues Schiffman does not disclose the limitation of claim 69. New claim 69 is addressed in the rejection above and the limitation is not deemed to be patentable over Schiffman.

Claim 65 is allowable over the prior art for the same reason set forth for previous claim 39 in the previous office action.

Applicant's arguments filed 11/10/08 have been fully considered but they are not persuasive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 10, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794